

THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARTIN LUTHER KING, JR.  
COUNTY, et al.,

Plaintiffs,

vs.

SCOTT TURNER in his official capacity  
as Secretary of the U.S. Department of  
Housing and Urban Development, et al.,

Defendants.

No. 2:25-cv-00814-BJR

ORDER GRANTING PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION

[PROPOSED]

This matter came before the Court on the moving Plaintiffs'<sup>1</sup> Motion for Preliminary Injunction ("Motion"). Having considered the briefs and declarations submitted in support of and opposition to the Motion, the briefs and declarations submitted in support of and opposition to the moving Plaintiffs' Motion for Temporary Restraining Order, and the other pleadings and papers filed in this action, the Court makes the following Findings of Fact and Conclusions of Law.

**I. FINDINGS OF FACT**

1. Plaintiffs rely on federal funding from the Continuum of Care (CoC) program

<sup>1</sup> The moving Plaintiffs are Martin Luther King, Jr. County (King County), Pierce County, Snohomish County, City and County of San Francisco (San Francisco), County of Santa Clara (Santa Clara), City of Boston (Boston), and City of New York (New York) (collectively, "Plaintiffs") as to the HUD Grant Conditions and King County as to the FTA Grant Conditions. Plaintiff City of Columbus did not join in the Motion.

1 established by Congress to provide critical services to individuals and families experiencing  
2 homelessness, including rapid rehousing, permanent supportive housing, and other services.

3         2. In January 2024, Defendant U.S. Department of Housing and Urban Development  
4 (HUD) posted a biennial Notice of Funding Opportunity (NOFO), inviting applications from local  
5 coalitions, known as “Continuums,” for CoC funding. None of the conditions challenged here were  
6 included in the NOFO. After reviewing applications, HUD conditionally awarded Plaintiffs and  
7 their Continuums a total of nearly \$300 million in CoC grants in Fiscal Year 2024. Relying on  
8 these awards, Plaintiffs have already committed, and in some cases expended, millions of dollars  
9 for homelessness assistance services.  
10

11         3. In March 2025, HUD began presenting Plaintiffs with CoC grant agreements (“CoC  
12 Agreements”) containing grant conditions (“CoC Grant Conditions”) that were not included in the  
13 NOFO or authorized by any statute or regulation, specifically:  
14

15             a. The CoC Agreements state that “[t]his Agreement, the Recipient’s use of funds  
16 provided under this Agreement . . . , and the Recipient’s operation of projects  
17 assisted with Grant Funds” are “governed by” not only certain specified  
18 statutes, rules, and grant-related documents, but also by “all current Executive  
19 Orders . . . .”

20             b. The CoC Agreements require the recipient to certify “it does not operate any  
21 programs that violate any applicable Federal anti-discrimination laws,  
22 including Title VI of the Civil Rights Act of 1964.” The CoC Agreements also  
23 require the recipient to agree that “its compliance in all respects with all  
24 applicable Federal anti-discrimination laws is material to the U.S.  
25 Government’s payment decisions” for purposes of the False Claims Act (FCA),  
26  
27

31 U.S.C. §§ 3729 et seq. President Donald J. Trump, HUD, and other agencies have confirmed their agenda is to prohibit policies or programs promoting inclusion for people of all races, ethnicities, national origins, sexes, gender identities, or sexual orientations through the guise of enforcing federal nondiscrimination law.

c. The CoC Agreements provide that “[n]o state or unit of general local government that receives funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or abets policies that seek to shield illegal aliens from deportation.”

d. The Grant Agreements further require the recipient to comply with “applicable requirements that HUD, the Attorney General, or the U.S. Center for Immigration Services may establish from time to time to comply with PRWORA, Executive Order 14218, other Executive Orders or immigration laws.”

e. The CoC Agreements also provide:

Subject to the exceptions provided by [the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (PRWORA)], the recipient must use [the Systematic Alien Verification for Entitlements (SAVE) system], or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States.

f. The CoC Agreements require the recipient to agree it “shall not use grant funds to promote ‘gender ideology,’ as defined in [Executive Order] 14168.”

g. The CoC Agreements prohibit the recipient from using grant funds “to fund or

1 promote elective abortions, as required by [Executive Order] 14182, Enforcing  
2 the Hyde Amendment.”

3 4. On May 7, 2025, this Court entered a temporary restraining order (TRO) enjoining  
4 the Defendants from, among other things, imposing or enforcing the CoC Grant Conditions against  
5 Plaintiffs or Plaintiffs’ continuums, rescinding or canceling the CoC Agreements or withholding  
6 funds based on such conditions, or requiring Plaintiffs to make any “certification” or representation  
7 related to the those conditions. The TRO served, in part, to prevent immediate and irreparable  
8 harms that Plaintiffs faced from having to choose between accepting conditions that are likely  
9 unlawful or losing hundreds of millions of dollars in federal grant funding, including funding that  
10 they have already budgeted and are committed to spending and that is necessary to serve Plaintiffs’  
11 most vulnerable residents. This TRO was set to remain in effect 14 days from entry.  
12

13 5. Plaintiffs continue to face immediate and irreparable harms during the pendency of  
14 this litigation absent a preliminary injunction. Plaintiffs have an immediate need to receive CoC  
15 funds to sustain ongoing programs and services. And, once the TRO expires, they are again faced  
16 with the choice of losing these funds or accepting conditions that are likely unlawful. Plaintiffs  
17 have begun budgeting, planning, and contracting with service providers who are already incurring  
18 costs and expect reimbursement; households reliant on private rentals are at risk of eviction if there  
19 is even a short-term interruption of rent payments covered by CoC funds; and the interruption of  
20 funds could threaten the operation of supportive housing. Ultimately, any delay or loss of funding  
21 would result in disruption of services and cause irreparable damage to individuals’ lives. For  
22 example:  
23

- 24 a. Without CoC funding, 700 households in King County who live in private  
25 rentals would be at risk of eviction in the short-term because their rent would  
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1 not be paid, with 2,144 households impacted in total.

- 2 b. In San Francisco, close to 2,000 program participants would lose their housing  
3 subsidies and services and would be at risk of imminent evictions, causing  
4 individuals and families to slip back into homelessness. Interruption of funding  
5 from the CoC program supporting more than 1,400 households is estimated to  
6 cost San Francisco \$17 million in direct rehousing costs.
- 7 c. If unable to access CoC funding conditionally awarded in January 2025, Santa  
8 Clara would lose one third of its budget for permanent supportive housing and  
9 rapid rehousing and would be forced to choose between redirecting County  
10 General Funds away from other services and programs towards programs for  
11 the homeless or dramatically cutting the programs, which would lead to higher  
12 rates of homelessness.  
13  
14

15 6. Based on the TRO, Plaintiffs signed their CoC grant agreements and, in submitting  
16 them, provided notice to Defendants that this Court ruled they were enjoined from “imposing or  
17 enforcing the CoC Grant Conditions as defined in Plaintiffs’ Motion, with respect to any CoC  
18 funds awarded to Plaintiffs or members of Plaintiffs’ Continuums; (2) rescinding or cancelling the  
19 CoC Grant Agreements, or pausing, freezing, impeding, blocking, cancelling, terminating,  
20 delaying, withholding, or conditioning CoC funds, based on such Grant Conditions; or (3)  
21 requiring Plaintiffs to make any ‘certification’ or other representation related to compliance with  
22 the CoC Grant Conditions.” Plaintiffs included copies of the Court’s Temporary Restraining Order  
23 with their submissions. Plaintiffs intend to draw down on their CoC grant funds during the  
24 pendency of this litigation.  
25

26 7. Notwithstanding that the TRO enjoined Defendants from “delaying” or  
27

1 “withholding” CoC funds based on the CoC Grant Conditions, HUD has stated that it will not  
 2 permit Plaintiffs to “draw down their FY 2024 CoC grant funds” if they “changed the grant  
 3 agreement without HUD authorization,” including by excising the CoC Grant Conditions subject  
 4 to the TRO. Dkt. # 56 at 4.

5  
 6 8. In addition to the CoC funds, Plaintiff King County has over \$446 million of  
 7 appropriated FTA funds pursuant to programs codified in title 49, chapter 53 of the U.S. Code.  
 8 These funds were awarded without any of the conditions challenged here.

9 9. On April 25, 2025, FTA issued a revised Master Agreement, which applies to  
 10 federal grants awarded to King County. The new Master Agreement contains the following new  
 11 conditions (“FTA Grant Conditions”):

12 a. The Master Agreement requires the recipient to “agree[] to comply with all  
 13 applicable federal requirements and follow applicable federal guidance.” The  
 14 Master Agreement defines “Federal Requirement” to include “[a]n applicable  
 15 federal law, regulation, or executive order.”

16 b. The Master Agreement provides:

17 (1) Pursuant to section (3)(b)(iv)(A) [of the DEI Order], the  
 18 Recipient agrees that its compliance in all respects with all  
 19 applicable Federal antidiscrimination laws is material to the  
 20 government’s payment decisions for purposes of [the FCA].

21 (2) Pursuant to section (3)(b)(iv)(B) [of the DEI Order], by entering  
 22 into this Agreement, the Recipient certifies that it does not  
 23 operate any programs promoting [DEI] initiatives that violate  
 any applicable Federal anti-discrimination laws.

24 While FTA grants have long required compliance with nondiscrimination laws,  
 25 DOT has confirmed its intent to enforce a sweeping interpretation of these  
 26 conditions inconsistent with statutory text and current court interpretations of  
 27

1 the Federal antidiscrimination laws.

2 c. The Master Agreement also provides:

3 The Recipient . . . will cooperate with Federal officials in the  
4 enforcement of Federal law, including cooperating with and not  
5 impeding U.S. Immigration and Customs Enforcement (ICE) and  
6 other Federal offices and components of the Department of  
Homeland Security in the enforcement of Federal immigration law.

7 10. This Court's TRO also enjoined Defendants from, among other things, imposing or  
8 enforcing the FTA Grant Conditions against King County, rescinding or canceling the FTA funds  
9 awarded to King County or withholding funds based on such conditions, or requiring King County  
10 to make any "certification" or representation related to the those conditions. Again, this aspect of  
11 the TRO served, in part, to prevent immediate and irreparable harms that King County faced from  
12 having to choose between accepting likely unlawful conditions or losing hundreds of millions in  
13 FTA funding.

14 11. After the TRO issued, King County electronically executed FTA grant agreements  
15 and amendments and then emailed FTA clarifying that, in doing so, King County was relying on  
16 the TRO's prohibition on imposing or enforcing the FTA Grant Conditions and that King County  
17 understood those conditions would not be applied against it. FTA responded indicating that "when  
18 the TRO (or any subsequent injunctive order) expires, FTA may treat the Restrained Conditions  
19 like any other part of an agreement, regardless of whether the agreement was signed while the  
20 TRO was in effect." Suppl. Morrison Decl., Ex. C. FTA has represented that King County's  
21 execution of these agreements and amendments "accepted the terms of the Master Agreement,  
22 subject to the limitations set forth" in the TRO. Dkt. # 57 ¶ 16.

23 12. King County intends to draw down funds from awarded grants during the pendency  
24 of litigation in order to continue developing, constructing, maintaining, repairing, and replacing  
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1 its wide range of transit vehicles and facilities across its system. Moreover, King County needs  
2 clarity on whether it can both draw down and plan on submitting proposals in the immediate future  
3 to plan for Metro Transit needs in Fiscal Year 2026 and beyond. King County has a number of  
4 outstanding applications for FTA grants or amendments that are in various stages of review.  
5 Absent a preliminary injunction, FTA's representations suggest that it will consider King County  
6 to have accepted the FTA Grant Conditions and retroactively apply such conditions to the executed  
7 agreements upon the expiration of the TRO.  
8

9 13. FTA has taken the position that despite King County's accepting its pending grants  
10 subject to the limitations set forth in the TRO, King County is bound by the FTA Grant Conditions,  
11 Dkt. #57 ¶ 16-17.  
12

13 14. The FTA also plans to issue new Assurances and Conditions in the near future,  
14 which likely will contain similar conditions as the FTA Grant Conditions.  
15

16 15. It also appears that FTA has unilaterally and retroactively attached the new Master  
17 Agreement with the FTA Grant Conditions to grant agreements executed before that Master  
18 Agreement issued.  
19

20 16. The loss of FTA funding would cause King County to substantially curtail its  
21 existing and near-future planned transit operations and entirely abandon some elements of its  
22 structure. King County would have to fundamentally rework its longstanding financial plans and  
23 procedures, capital project delivery process, and service delivery models in ways that could have  
24 significant impacts on the County's mission, its employees, and its riders. Its service network  
25 would likely have to be cut back in ways that could significantly reduce mobility options for a  
26 large portion of King County's population while potentially increasing traffic congestion and  
27 slowing the movement of freight and goods across the region.



## II. CONCLUSIONS OF LAW

1. The Court has jurisdiction over Defendants and the subject matter of this action. Plaintiffs' claims are not subject to the Tucker Act because the sources of their asserted rights are the U.S. Constitution, including the Separation of Powers doctrine and the Fifth Amendment Due Process Clause, and the Administrative Procedure Act (APA). Moreover, the type of relief Plaintiffs seek is declaratory and injunctive, precisely the kind of relief that is generally not available in the Court of Federal Claims. *See Doe v. Tenet*, 329 F.3d 1135, 1141 (9th Cir. 2003).

2. The Court deems no security bond is required under Rule 65(c).

3. Plaintiffs have standing to bring this suit. "A loss of funds promised under federal law satisfies Article III's standing requirement." *City & Cnty. of S.F. v. Trump* ("San Francisco"), 897 F.3d 1225, 1235 (9th Cir. 2018); *see also Dep't of Commerce v. New York*, 588 U.S. 752, 767 (2019). Here, Plaintiffs have been conditionally awarded federal grant funds that they could lose unless they accept unlawful conditions that would dictate how they govern on matters of public concern. This imminent loss of funds or infringement of rights is traceable to the conditions at issue and redressable by an order barring their enforcement. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (cleaned up).

4. To obtain a preliminary injunction, Plaintiffs must establish (1) they are likely to succeed on the merits; (2) irreparable harm is likely in the absence of preliminary relief; (3) the balance of equities tips in Plaintiffs' favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); Fed. R. Civ. P. 65(b)(1).

5. There is a strong likelihood that Plaintiffs will succeed on the merits of their claims that the CoC Grant Conditions violate (1) the Constitution's separation of powers doctrine, *San Francisco*, 897 F.3d at 1234; (2) the Fifth Amendment's vagueness doctrine, *Grayned v. City of*

1 *Rockford*, 408 U.S. 104, 108 (1972); and (3) the APA, 5 U.S.C. § 706(2).

2 6. There is a strong likelihood that Plaintiff King County will succeed on the merits  
3 of its claims that the FTA Grant Conditions violate (1) the Constitution's separation of powers  
4 doctrine, *San Francisco*, 897 F.3d at 1234; (2) the Fifth Amendment's vagueness doctrine,  
5 *Grayned*, 408 U.S. at 108; and (3) the APA, 5 U.S.C. § 706(2).  
6

7 7. Plaintiffs have also shown that they are likely to suffer irreparable harm during the  
8 pendency of litigation in the absence of a preliminary injunction.

9 8. The balance of equities tips toward Plaintiffs and the public interest strongly weighs  
10 in favor of entering a preliminary injunction.

11 9. The Defendants have violated the terms of the TRO.  
12

### 13 **III. ORDER**

14 It is now, therefore, ORDERED as follows:

15 1. Plaintiffs' Motion for Preliminary Injunction is GRANTED;

16 2. HUD and its officers, agents, servants, employees, and attorneys, and any other  
17 persons who are in active concert or participation with them (collectively "Enjoined HUD  
18 Parties"), are enjoined from (1) imposing or enforcing the CoC Grant Conditions, as defined in  
19 Plaintiffs' Motion, or any materially similar terms or conditions with respect to any CoC funds  
20 awarded to Plaintiffs or members of Plaintiffs' Continuums; (2) rescinding, withholding, or  
21 cancelling the CoC Grant Agreements, or pausing, freezing, impeding, blocking, cancelling,  
22 terminating, delaying, withholding, or conditioning CoC funds, based on such terms or conditions;  
23 or (3) requiring Plaintiffs to make any "certification" or other representation related to compliance  
24 with such terms or conditions;  
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1           3.       The Enjoined HUD Parties shall immediately treat any actions taken to implement  
2 or enforce the CoC Grant Conditions, including any delays or withholding of funds based on such  
3 conditions, as null, void, and rescinded, and may not retroactively apply such conditions to grant  
4 agreements executed during the effective period of the TRO or this preliminary injunction. The  
5 Enjoined HUD Parties shall immediately take every step necessary to effectuate this order,  
6 including clearing any administrative, operational, or technical hurdles to implementation;  
7

8           4.       DOT and FTA, and their officers, agents, servants, employees, and attorneys, and  
9 any other persons who are in active concert or participation with them (collectively “Enjoined  
10 DOT Parties”), are enjoined from (1) imposing or enforcing the FTA Grant Conditions, as defined  
11 in Plaintiffs’ Motion, or any materially similar terms or conditions to any FTA funds awarded to  
12 Plaintiff King County; (2) rescinding, withholding, or cancelling the FTA grant awards, or pausing,  
13 freezing, impeding, blocking, canceling, terminating, delaying, withholding, or conditioning FTA  
14 funds, based on such terms or conditions; or (3) requiring King County to make any “certification”  
15 or other representation related to compliance with such terms or conditions;  
16

17           5.       The Enjoined DOT Parties shall immediately treat any actions taken to implement  
18 or enforce the FTA Grant Conditions, including any delays or withholding of funds based on such  
19 conditions, as null, void, and rescinded, and may not retroactively apply such conditions to grant  
20 agreements executed during the effective period of the TRO or this preliminary injunction. The  
21 Enjoined DOT Parties shall immediately take every step necessary to effectuate this order,  
22 including clearing any administrative, operational, or technical hurdles to implementation;  
23

24           6.       Defendants’ counsel shall provide written notice of this Order to all Defendants and  
25 agencies and their employees by the end of the day on Friday, May 23, 2025;  
26  
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7. By the end of the day on Friday, May 23, 2025, the Defendants SHALL FILE on the Court's electronic docket and serve upon Plaintiffs a Status Report documenting the actions that they have taken to comply with this Order, including a copy of the notice and an explanation as to whom the notice was sent;

8. This order remains in effect pending further orders from this Court.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2025.

HONORABLE BARBARA J. ROTHSTEIN

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